

new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(iv) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d)(1)(i) of this section.

(d) *Recreational specification measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC and ASMFC measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational summer flounder fishery to the recreational harvest limit, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (*i.e.*, multi-state conservation equivalency regions), may implement different combinations of minimum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of recreational landing estimates by mode or area for that state is less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER as soon as possible to implement the overall percent adjustment in recreational landings required for the fishing year, and the ASMFC's recommendation concerning con-

servation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The ASMFC will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals and, in the case of disapproved state and/or multi-state region proposals, the precautionary default measures.

(iii) The ASMFC may allow states assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the state can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted state proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a notice in the FEDERAL REGISTER to notify the public.

(iv) After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement either the state specific conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(e) *Research quota.* See § 648.22(g).

§ 648.103 Minimum fish sizes.

(a) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4 (a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat;

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18.5 inches (46.99 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, *e.g.*, fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets

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smaller than the size specified if all state requirements are met.

[61 FR 34968, July 3, 1996, as amended at 62 FR 10478, Mar. 7, 1997; 62 FR 37157, July 11, 1997; 62 FR 63875, Dec. 3, 1997; 63 FR 27868, May 21, 1998; 66 FR 39291, July 30, 2001; 67 FR 50372, Aug. 2, 2002; 72 FR 65468, Nov. 21, 2007; 73 FR 29999, May 23, 2008; 74 FR 30011, June 24, 2009; 75 FR 39177, July 8, 2010; 76 FR 38313, June 30, 2011]

EFFECTIVE DATE NOTE: At 76 FR 60628, Sept. 29, 2011, § 648.103 was revised, effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 648.103 Summer flounder accountability measures.

(a) *Commercial sector EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he/she determines that the inaction of one or more states will cause the commercial sector ACL to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the sector ACL to be exceeded.

(b) *State commercial landing quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment.* All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas, irrespective of whether the commercial sector ACL is exceeded. The overage deduction will be based on landings for the current year through October 31 and

on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing such restoration.

(c) *Recreational landings sector closure.* The Regional Administrator will monitor recreational landings based on the best available data and shall determine if the recreational harvest limit has been met or exceeded. The determination will be based on observed landings and will not utilize projections of future landings. At such time that the available data indicate that the recreational harvest limit has been met or exceeded, the Regional Administrator shall publish notification in the FEDERAL REGISTER advising that, effective on a specific date, the summer flounder recreational fishery in the EEZ shall be closed for remainder of the calendar year.

(1) *Recreational ACL overage evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs; and for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(2) *Recreational landing overage repayment.* If available data indicate that the recreational sector ACL has been exceeded and the landings have exceeded the RHL, the exact poundage of the landings overage will be deducted, as soon as possible, from a subsequent single fishing year recreational sector ACT.

(d) *Non-landing accountability measures, by sector.* In the event that a sector ACL has been exceeded and the overage has not been accommodated through landing-based AMs, then the exact amount by which the sector

ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year sector ACL.

(e) *State/Federal disconnect AM.* If the total catch, allowable landing, commercial quotas and/or RHL measures adopted by the ASMFC Summer Flounder Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures so no differential effects occur on Federal permit holders.

§ 648.104 Gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April

30 in the exemption area, which is east of the line that follows 72°30.0' W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.104(e), so that it is not "available for immediate use" outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the FEDERAL REGISTER terminating the exemption for the remainder of the exemption season.

(i) *Requirements.* (A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be in enrolled in the exemption program for a minimum of 7 days.

(ii) [Reserved]

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(3) The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she